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# The Great Principle of Self-Government

## Popular Sovereignty and Bleeding Kansas

*by Nicole Etcheson*

*Now, my friends, if we will only act conscientiously and rigidly upon this great principle of popular sovereignty, which guaranties to each State and Territory the right to do as it pleases on all things, local and domestic, instead of Congress interfering, we will continue at peace one with another. . . . Under that principle we have become, from a feeble nation, the most powerful on the face of the earth, and if we only adhere to that principle, we can go forward increasing in territory, in power, in strength and in glory until the Republic of America shall be the North Star that shall guide the friends of freedom throughout the civilized world. And why can we not adhere to the great principle of self-government, upon which our institutions were originally based?*

—Senator Stephen A. Douglas, 1858.<sup>1</sup>

**E**ngaged in a struggle to salvage his political career, Stephen A. Douglas spoke these words to his constituents in Ottawa, Illinois, during his famous debates with Abraham Lincoln. In Douglas's view, popular sovereignty was nothing less than the "great principle of self-government" itself. He had equated the two before and would do so again. Popular sovereignty, as one historian has pointed out, "rested on a historic, enduring, and deeply held belief in the capacity of the American people not only to govern themselves but to do what

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1. Robert W. Johannsen, ed., *The Lincoln–Douglas Debates of 1858* (New York: Oxford University Press, 1965), 48.

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# Congress of the United States,

At the First Session

BEGUN AND HELD AT THE CITY OF WASHINGTON

in the District of Columbia

on Monday the fifth day of December one thousand eight hundred and fifty-three.

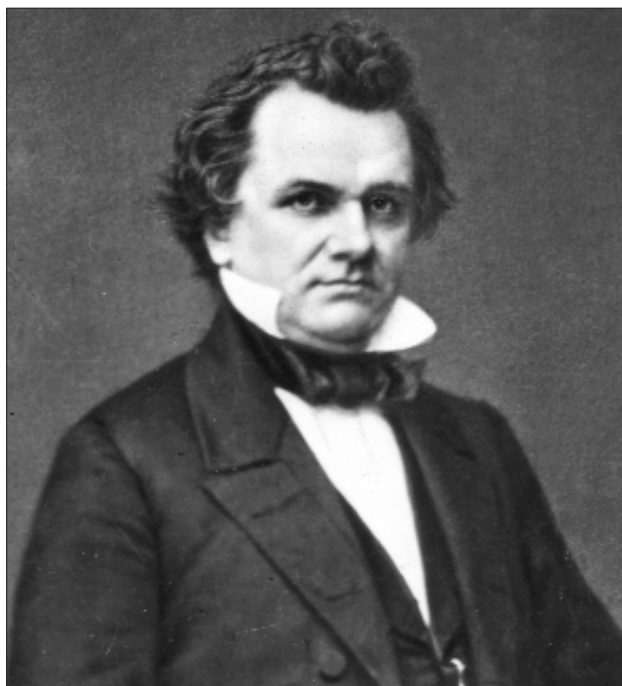
**AN ACT** To organize the Territories of Nebraska and Kansas.

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to-wit: beginning at a point in the Missouri river where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountain; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri river; thence down the main channel of said river to the place of beginning, and the same is hereby created into a temporary government by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: Provided, That nothing in this act contained shall be construed to inhibit the government of the United States from

The Kansas-Nebraska Act, 1854

was right.”<sup>2</sup> But if the connection between popular sovereignty and democracy was so clear, as Douglas certainly believed, why then do so many historians condemn popular sovereignty as a failure?<sup>3</sup> And if democracy would result in “right” decisions, why did so many people defy majority rule on the slavery issue in the 1850s?



A strong supporter of local self-government, Illinois senator Stephen A. Douglas introduced the Kansas-Nebraska bill, which embodied the principle of popular sovereignty.

Popular sovereignty’s problems were twofold. First, the democratic nature of popular sovereignty did not simplify its “practical application.”<sup>4</sup> Flawed voter registration and ballot counting marred self-government’s implemen-

tation. Second, rather than showing democracy’s transparency, implementing popular sovereignty revealed the difficulty of reconciling majority rule with constitutional rights and morality.

Lewis Cass, the longtime governor of Michigan Territory and Democratic presidential candidate in 1848, proposed popular sovereignty to resolve the tensions of United States expansion in the 1840s. Cass’s popular sovereignty was shaped by his belief in self-government, his desire for a moderate solution to the sectional tensions raised by expansion, and his indifference to slavery as a moral issue. Cass, of course, failed to win in 1848, and it was Zachary Taylor, a Whig, who would face the crisis over slavery in the territories acquired from Mexico. The Compromise of 1850 resolved those sectional tensions by providing sops to both sides. California became a free state, Utah and New Mexico territories were organized without restrictions as to slavery—although few people expected slavery to prosper there—and the South received a new, much more stringent law for the recovery of runaway slaves. Although the Fugitive Slave Law would give impetus to the abolitionist movement through propaganda such as *Uncle Tom’s Cabin*, in which Harriet Beecher Stowe powerfully depicted the plight of the fugitive slave mother Eliza, Northerners and Southerners hailed the Compromise of 1850 as bringing a “final” resolution of slavery agitation. The issue only arose again when Stephen A. Douglas, the powerful Illinois senator, sought to organize the territory west of Iowa and Missouri.<sup>5</sup>

Douglas adopted Cass’s idea of popular sovereignty. It offered a “pragmatic,” middle-ground approach to the slavery issue and also was compatible with Douglas’s strong belief in local self-government. But more important, popular sovereignty made possible expansion, which Dou-

2. Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 121–23.

3. Alice Nichols, *Bleeding Kansas* (New York: Oxford University Press, 1954), 251; Morrison, *Slavery and the American West*, 162. James A. Rawley called popular sovereignty “mischief-making dogma.” See Rawley, *Race and Politics: “Bleeding Kansas” and the Coming of the Civil War* (Philadelphia: J.B. Lippincott Co., 1969), 273. David M. Potter, *The Impending Crisis, 1848–1861* (New York: Harper and Row, 1976), 173, distinguished between the Kansas-Nebraska Act and popular sovereignty, arguing that one of the worst affects of the former’s “futility” was “to contaminate the doctrine of popular sovereignty, by employing it as a device for opening free territory to slavery.”

4. Morrison, *Slavery and the American West*, 121–23.

5. Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent, Ohio: Kent State University Press, 1996), xiv, 47, 57, 170; Milo Milton Quaife, *The Doctrine of Non-Intervention with Slavery in the Territories* (Chicago: M. C. Chamberlin, 1910), 45–62. In a Turnerian interpretation, Allen Johnson, “The Genesis of Popular Sovereignty,” *Iowa Journal of History and Politics* 3 (1905): 3–19, finds popular sovereignty’s roots in the frontier. Joseph G. Rayback, *Free Soil: The Election of 1848* (Lexington: University Press of Kentucky, 1970); Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (Lexington: University Press of Kentucky, 1964); Potter, *The Impending Crisis*, 90–176; William W. Freehling, *The Road to Disunion, vol. 1: Secessionists at Bay, 1776–1854* (New York: Oxford University Press, 1990), 475–510.



glas championed enthusiastically. What an earlier era called “Manifest Destiny,” the divine plan for the United States to fill up the continent, Douglas now embodied as “Young America.” Unfortunately, that plan had stalled. Territories had been acquired but not organized.<sup>6</sup>

In late 1853 Iowa senator Augustus C. Dodge introduced a bill to organize the territory west of his state. Douglas revised and reintroduced the measure in January 1854 as the Kansas–Nebraska bill, dividing the northern part of the Louisiana Purchase into the territories of Kansas and Nebraska and repealing the 1820 Missouri Compromise’s prohibition of slavery there. Douglas argued that the popular sovereignty provision of the Kansas–Nebraska Act essentially was the nonintervention formula that had been used in the 1850 Utah and New Mexico territorial bills. That was not quite the case, however, and there is reason to think that Douglas did not really believe his own argument. But Douglas needed to remove the prohibition on slavery to attain Southern support for a bill to organize the territories, and he needed a rationale acceptable to Northern constituents for repealing the Missouri Compromise prohibition. The repeal, however, provoked a backlash of opposition from Northerners. Despite the outcry, and a split in the Democratic Party itself, Douglas and his political allies pushed the bill through Congress. President Franklin Pierce signed it into law in May 1854. Cass, who had at first been “shocked” by Douglas’s repeal of the Missouri Compromise line, gave the bill his imprimatur as the “Father of Popular Sovereignty.” When the Kansas–Nebraska bill passed the upper house, Lewis Cass crowed, “I congratulate the Senate on the triumph of squatter sovereignty.”<sup>7</sup>

The Kansas–Nebraska Act granted settlers in Kansas Territory powers unheard of in earlier territories. Territorial status presumed residents’ dependency on the national government. But the Kansas–Nebraska bill gave residents of the territory far more self-government than usual: not only did the legislation reverse the presumption that Congress decided whether a territory could have slavery or freedom, it exempted territorial legislation from congressional approval and gave the territorial legislature power to override the governor’s veto. Earlier territories had not possessed these powers. Missouri politician Thomas Hart Benton opposed Kansas–Nebraska on the grounds that the principle of popular sovereignty was not applicable to the territories at all, as properly they were considered minors and wards of the nation. Others supported Kansas–Nebraska precisely because it removed the assumption of territorial residents’ political immaturity. As Kansas settlers themselves later boasted in a July Fourth toast to “*The Territory of Kansas*,” “her citizens are capable of governing themselves.”<sup>8</sup> Whether one agreed with it or not, Kansas–Nebraska invested the territory’s residents with the right to make a momentous political decision.

**A**lthough some settlers explicitly avowed an attachment for or against slavery, many merely engaged in what an observer called the “grand Kansas Land Lottery.” Land speculation and economic advancement interested them more than did slavery or abolition. Neighboring Missourians in particular crossed into Kansas, established claims, and then returned to Missouri to await the official land sales.<sup>9</sup> Frontiersmen organized claim associations to protect their rights. In one case, squatters along Salt Creek passed a series of resolutions where-

6. Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973), 240, vii; Johannsen, “Stephen A. Douglas, Popular Sovereignty and the Territories,” *Historian* 22 (1960), 378–95, esp. 384, 379–80.

7. *New York Times*, March 6, 1854. Gerald W. Wolff, *The Kansas–Nebraska Bill: Party, Section, and the Coming of the Civil War* (New York: Revisionist Press, 1977), 37–46; Don E. Fehrenbacher, *The South and Three Sectional Crises* (Baton Rouge: Louisiana State University Press, 1980), 43; Morrison, *Slavery and the American West*, 142–56. Yonatan Eyal, “With His Eyes Open: Stephen A. Douglas and the Kansas–Nebraska Disaster of 1854,” *Journal of the Illinois Historical Society* 91 (Winter 1998): 175–217, argues that Douglas knew Kansas–Nebraska would be controversial but believed “national expansion” warranted the risk. Klunder, *Lewis Cass and the Politics of Moderation*, 265–66.

8. *Herald of Freedom* (Lawrence), July 21, 1855; Robert W. Johannsen, “The Kansas–Nebraska Act and Territorial Government in the United States,” in *Territorial Kansas: Studies Commemorating the Centennial* (Lawrence: University of Kansas Publications, 1954), 17–32, esp. 18–19, 24–25; *New York Times*, April 26, March 24, 1854.

9. *New York Times*, November 11, 1854; Charles S. Gleed, ed., *The Kansas Memorial, A Report of the Old Settlers’ Meeting Held at Bismarck Grove, Kansas, September 15th and 16th, 1879* (Kansas City, Mo.: Press of Ramsey, Millett, and Hudson, 1880), 59–60. See also Paul W. Gates, *Fifty Million Acres: Conflicts over Kansas Land Policy, 1854–1890* (New York: Atherton Press, 1966); Edward E. Hale, *Kansas and Nebraska: The History, Geographical and Physical Characteristics, and Political Position of Those Territories; An Account of the Emigrant Aid Companies, and Directions to Emigrants* (Boston: Phillips, Sampson and Co., 1854), 234.

by they bound themselves to protect members' claims. The resolutions spoke of a "bona fide intention of occupying," the necessity of marking claims clearly, and a two-week deadline for beginning construction of a building, but they did not specify that the squatter had to be living on the claim.<sup>10</sup> Absentee claims, long accepted on the frontier, cre-

Even when many settlers had economic rather than political motives, popular sovereignty politicized the migration. Samuel C. Pomeroy reported to Amos Lawrence, who was the financial backer of the New England Emigrant Aid Company,



The Kansas-Nebraska Act politicized migration into the new territory and invested its settlers with the right to make a momentous political decision. This 1854 photograph depicts the early settlement home of the William Lykins family in Lawrence.

ated the problem of claim jumping. To further complicate land sales, Congress opened the territory to settlement before extinguishing Indian title. New England settler Edward Fitch complained that he had to buy his claim twice from squatters. Such claim disputes also troubled the establishment of the New England-settled town of Lawrence. Many a later violent dispute that exacerbated Kansas's political turmoil had its roots in disagreements about the rightful ownership of a land claim.<sup>11</sup> But land claim disputes, even violent ones, were not the only problem.

10. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 34th Cong., 1st sess., 1856, H. Rept. 200, serial 869, 953-54.

11. Gates, *Fifty Million Acres*, 58-59; Samuel A. Johnson, *The Battle Cry of Freedom: The New England Emigrant Aid Company in the Kansas Crusade* (Westport, Conn.: Greenwood Press, 1977), 72-73; Rawley, *Race & Politics*, 82-83; Edward P. Fitch to Parents, September 8, 1855, in John M. Peterson, ed., "Letters of Edward and Sarah Fitch, Lawrence, Kansas, 1855-1863, Part I," *Kansas History: A Journal of the Central Plains* 12 (Spring 1989): 48-70, esp. 53-55; Charles Robinson, *The Kansas Conflict*

The roads are lined with teams from the border states, and in about every fifth or eighth wagon you will see a sprinkling of negro slaves. Don't make yourselves believe that the slave holders have given up Kansas! A terrible struggle is before us at this very first Election. They are determined to have a law recognizing slavery at the very first meeting of the Legislature. If [they] do not get it at the first Legislature they never will!!<sup>12</sup>

Pomeroy merely made explicit what everyone knew. Settlers could be expected to vote for or against slavery based on their regional background and stake in the institution. As expected, large numbers of settlers came from neighboring Missouri and were friendly to slavery. Less expected, however, was a small but increasingly notorious migration from New England. A large migration from the "Old

Northwest" and mid-Atlantic states, although not as noted, constituted a substantial portion of Kansas Territory's population.<sup>13</sup> But the equation of settlers with voters was not straightforward.

(Lawrence, Kans.: Journal Publishing Co., 1898), 77-90; *Herald of Freedom*, January 27, August 4, 1855. The Wakarusa War of 1855, which brought Missourians into the territory to suppress the extra-legal free-state movement, arose from the murder of a man by a rival for the same claim. See *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 1052-56; G. Douglas Brewerton, *The War in Kansas: A Rough Trip to the Border* (New York: Derby and Jackson, 1856), 223-32; O. N. Merrill, *True History of the Kansas Wars: And Their Origin, Progress and Incidents* (Cincinnati: J. R. Telfer, 1856), 15-23; Nichols, *Bleeding Kansas*, 49-52.

12. Samuel C. Pomeroy to Amos Lawrence, September 22, 1854, University of Kansas History Collection (Library and Archives Division, Kansas State Historical Society, photostat).

13. In 1855 Missourians made up 46.5 percent of the territory's population. "Old Northwest" and mid-Atlantic state migrants made up almost a third and New Englanders constituted 4.3 percent of Kansas's population. The remainder had emigrated from abroad or were children born in the territory. See *Kansas Territorial Census*, 1855.

In preparation for the March 1855 election of a territorial legislature a census was taken. Clearly those listed as voters on the territorial census had the right to vote in that election. But what about adult white males who arrived in the territory after the census had been taken, but before election day? Census taker William Barbee testified that, owing to the dry late winter weather, there were many such settlers. Could they vote? And what about the many Missourians with claims in the territory who still technically resided in Missouri? Did they have a right to vote? Also, many a migrant who arrived found Kansas did not meet his expectations and returned east. Manhattan settler Isaac Goodnow recalled that two-thirds of the party he came with “failed in the hour of trial” and went home. Julia Lovejoy’s letters, while from a woman who stayed in Kansas, nonetheless give often heart-rending evidence of the difficulties of migration, including illness and the high costs of travel and provisions.<sup>14</sup> Hardship often eroded settlers’ good intentions and undermined their resolve to stay. The connection between migration, residency, and voting thus was not clear to many on the Kansas border, a situation that complicated popular sovereignty’s implementation. Without intending to, popular sovereignty raised these issues but provided no answers.

Before the election, Andrew H. Reeder, the first of a long series of Kansas territorial governors, issued a proclamation that “A voter must dwell here at the time of offering his vote.”<sup>15</sup> This seems unambiguous. But as the foremost student of migration and voting, Kenneth Winkle, notes, widespread migration in the nineteenth century had eroded the link between residency and voting. “Intention” to settle in that locale, even without fulfilling residency requirements, became a sufficient voting prerequisite for many Americans, especially on the frontier.<sup>16</sup> Nor did it help that significant fraud occurred in Kansas elections.

14. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 243–44; Isaac T. Goodnow, “Personal Reminiscences, 1881,” Isaac Tichenor Goodnow Collection, Library and Archives Division, Kansas State Historical Society; Julia Louisa Lovejoy to Editor, April 13, 1855, in Julia Louisa Lovejoy, “Letters from Kansas,” *Kansas Historical Quarterly* 11 (February 1942): 29–44, esp. 36.

15. “Executive Minutes,” *Kansas Historical Collections, 1883–1885* 3 (1886): 226–78, esp. 251–59.

16. Kenneth J. Winkle, *The Politics of Community: Migration and Politics in Antebellum Ohio* (Cambridge, U.K.: Cambridge University Press, 1988), 63. Joel H. Silbey, *The American Political Nation, 1838–1893* (Stanford: Stanford University Press, 1991), also pointed out the laxity of suffrage requirements. Citizenship was not always required, and residency

Democracy requires elections to reveal the people’s will. Senator William H. Seward recognized this when, seeing that the Kansas–Nebraska bill would be pushed through Congress, he told Southerners, “Come on then, gentlemen of the Slave States. Since there is no escaping your challenge, I accept it in behalf of the cause of freedom. We will engage in competition for the virgin soil of Kansas, and God give the victory to the side which is stronger in numbers as it is in right.”<sup>17</sup> The crucial factor, as Seward recognized, was “numbers.” But numbers have to be counted, a process that frequently invites fraud.

The census preceding the March territorial election recorded 2,905 voters in Kansas Territory. Yet more than six thousand votes were cast, overwhelmingly favoring proslavery legislative candidates. A congressional investigation later found almost five thousand of these votes to be fraudulent. Some allowance could be made for new migrants who truly intended to remain in Kansas but were not counted in the census. At Lawrence a newly arrived party of New Englanders immediately went to the polls. Missourians felt the census undercounted them, for it had not counted settlers who had claims in Kansas but wintered in Missouri. But all observers noted large numbers of Missourians crossing the border for election day. These parties of Missourians were well organized, well armed, and “well corned.”<sup>18</sup>

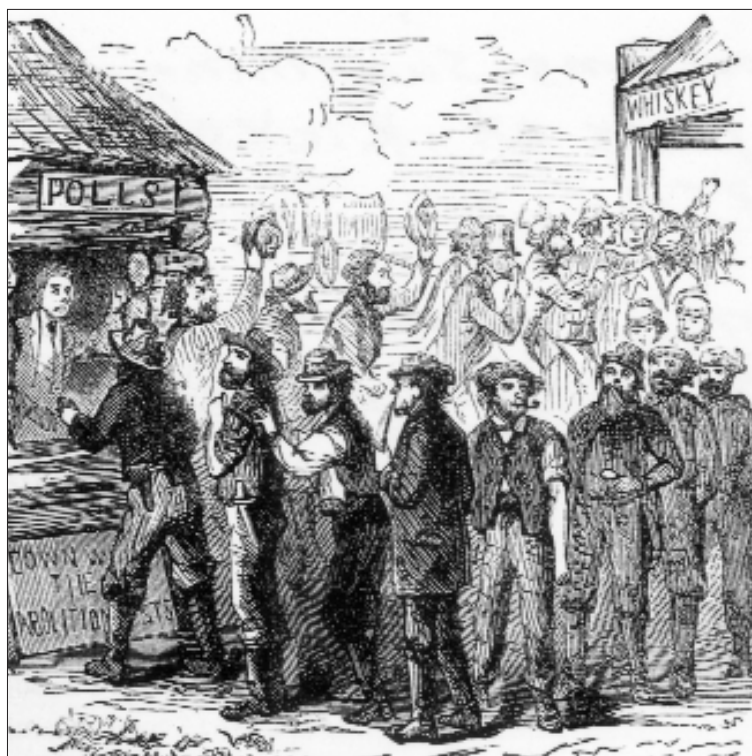
requirements were lenient and often unenforced. Judges of elections rarely challenged voters, and even those challenged frequently were allowed to vote. The prevailing sentiment was that adult white men’s suffrage was a basic right of free government. See Silbey, *The American Political Nation*, 142–44.

17. *New York Times*, May 27, 1854. On democracy, see Robert H. Wiebe, *Self-Rule: A Cultural History of American Democracy* (Chicago: University of Chicago Press, 1995), 2; Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1988), 174.

18. Rawley, *Race and Politics*, 87–89; Nichols, *Bleeding Kansas*, 28. An election for a territorial delegate had been held in November 1854, before the census was taken. The proslavery candidate won 2,258 votes, and the remaining candidates totaled 669 votes. An estimated 1,400 to 1,700 votes were cast illegally. See Russell K. Hickman, “The Reeder Administration Inaugurated: Part I—The Delegate Election of November, 1854,” *Kansas Historical Quarterly* 36 (Autumn 1970), 305–40, esp. 322–23, 334–35; *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 159–65, 13–31, 123–26, 361–63, 435–36, 36–65, 351–53; Russell K. Hickman, “The Reeder Administration Inaugurated: Part II—The Census of Early 1855,” *Kansas Historical Quarterly* 36 (Winter 1970): 424–55, esp. 430.



At some polling places, observers watched Missourians vote repeatedly, sometimes by exchanging hats and coats to slightly alter their appearance. Some judges of election dispensed with the oath that voters were required to swear, while others modified it so that nonresident voters could take it in good conscience. Judges who would not go along



Because Missourians crossed into Kansas to vote illegally, the first election for a territorial legislature recorded some five thousand fraudulent voters. In this early sketch, Missourians swarm the polls at Kickapoo, Leavenworth County, in 1855.

with these new procedures were either out-voted or intimidated into resigning. Not only did the Missourians swell the proslavery vote, but they suppressed the free-soil turnout. Many freesoilers were intimidated enough by the sight of Bowie knives that they did not even attempt to vote. Others reported that their efforts to cast ballots caused fights.<sup>19</sup>

19. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 343–46, 259–61, 225–27, 192–99, 168–70, 148–50, 154–55, 308–11, 174–76; *Herald of Freedom*, April 28, 1855.

Missourians rationalized their own voting by pointing to eastern migrants whom they considered “imported” to the territory and “hired” solely to vote. Some cited a group of Pennsylvanians who voted but did not remain in the territory, having decided to leave even before the election. The failure of many eastern migrants to make permanent homes in the territory gave credence to these charges. Missourians also felt that Reeder should have called for the election in the fall, before the spring migration from the East had taken place. If the election had been held earlier, Missouri settlers clearly would have predominated.<sup>20</sup>

Most important, Missourians argued that on the frontier, future plans mattered as much as actual residency. A handbill encouraging Missourians to vote insisted that an intention to reside in the territory, not actual ownership and residence on a claim, was the true qualification: “By the Kansas act, every man in the Territory on the day of the election is a legal voter, if he have not fixed a day for his return to some other home.”<sup>21</sup> A border settler later explained that he voted in 1855 although still living in Missouri because he intended to move to Kansas and was “naturally anxious to have a voice in moulding the institutions under which I designed to live.”<sup>22</sup> One Missourian took the doctrine of intent to the extent of voting for his nine-year-old son because “he had made him a claim on Bull Creek, adjoining his own, and he expected Jemmy would become a resident of the Territory and a voter.”<sup>23</sup> As Jemmy’s vote indicated, many Missourians stretched the doctrine of intent beyond its reasonable limits. That Missourians knew their claim to intent was weak is suggested by the remarks of a Missouri man, who pointed out that although voters were required to take an oath swearing to their residency, “No man was ever sworn that he would not go away.”<sup>24</sup> With that reading of intention, Missourians could, and did, cross over for the day and consider themselves residents eligible to vote.

20. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 37, 925–27, 127–28, 267–69, 271–72, 37; William E. Parrish, *David Rice Atchison of Missouri: Border Politician* (Columbia: University of Missouri Press, 1961), 166.

21. Handbill, 1855, folder 6, Frederick Starr Jr. Papers, Western Historical Manuscript Collection, Columbia, Mo.

22. *New York Times*, May 9, 1857.

23. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 225–27.

24. Locke Hardeman to G. R. Smith, June 10, 1855, General George R. Smith Collection, Missouri Historical Society, St. Louis.

Election irregularities were typical of the antebellum United States. Thomas Hart Benton wrote that fall of “elections governed by violence and terror,” referring to Kentucky and Missouri, as well as Kansas.<sup>25</sup> Missouri Congressman Mordecai Oliver insisted that whatever disturbances had occurred in Kansas elections fell within the parameters of normal election experience. Governor Reeder ordered new elections in districts where the fraud was most blatant or complainants had followed proper procedures in protesting the elections, but proslavery legislators still controlled the newly elected territorial legislature.<sup>26</sup>

Whatever the rationales Missourians presented for their voting in the territory, free-soil settlers remained outraged. Edmund S. Morgan said that election rowdiness and fraud were less prevalent in New England than in other parts of the country because the secret ballot was in wider use there.<sup>27</sup> This may explain some of the outrage of New England migrants and why Southerners often did not understand free-soil voters’ anger. It is also true that Missourians overdid it. The scope of fraudulent voting raised eyebrows even in a society of widespread voting irregularities. In any case, a free-soil memorial to Congress protested that the Kansas–Nebraska bill “is made to mean popular sovereignty for them—serfdom for us.” A Northern man called the Missourians’ actions “The practical exposition given . . . to the Douglass doctrine of ‘Squatter Sovereignty.’”<sup>28</sup>

25. Thomas H. Benton to Messrs. Bryant and Co., September 16, 1855, box 2, Thomas Hart Benton Papers, *ibid.* On election irregularities, see David Grimsted, *American Mobbing, 1828–1861: Toward Civil War* (New York: Oxford University Press, 1998), 194–98; Mark W. Summers, *The Plundering Generation: Corruption and the Crisis of the Union, 1849–1861* (New York: Oxford University Press, 1987), 52–53, 58, 60. Debate exists over the extent of fraud in U.S. elections. Some scholars argue that attempted fraud failed because opposition parties challenged voters, and local people would know a voter’s credentials and protest imported voters. See Silbey, *The American Political Nation*, 147–48. So many new settlers in Kansas Territory made determining who had the right to vote less clear. More than that, however, an opposition party, the freesoilers, was not yet organized to challenge voters. When judges of election or voters did challenge voters, they were threatened.

26. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 75; “Governor Reeder’s Administration,” *Kansas Historical Collections*, 1891–1896 5 (1896): 163–234, esp. 180–84. In fact, the territorial legislature, citing a legislature’s power to determine the qualifications of its own members, threw out the governor’s special elections and refused to seat the free-soil legislators so elected. See *ibid.*, 184–90.

27. Morgan, *Inventing the People*, 174–90.

28. B. B. Hamilton to Richard Yates, August 13, 1855, box 1, Richard Yates Papers, Illinois State Historical Library, Springfield; *New York Times*,

Free-soil settlers reacted by rejecting the “bogus” territorial legislature and its laws. To accept a fraudulently elected body would be to submit to slavery rather than the self-government promised by the Kansas–Nebraska Act. Freesoilers chose to “repudiate” the territorial laws as “no laws for us, the makers being not of us.”<sup>29</sup>

After the March election, freesoilers boycotted territorial elections. Declaring that the invasion of voters from outside the territory had “defeat[ed] the object” of the Kansas–Nebraska Act, free-soil settlers declared they had no recourse but “forming a government for themselves.”<sup>30</sup> Freesoilers organized an extra-legal movement called the Topeka government, whose name commemorated the town where freesoilers chose to become freestaters. They asked for immediate admission to the Union as a state, warning as one Topeka settler did, “Admit us not and we are but slaves.”<sup>31</sup>

This free-state movement demonstrated mixed feelings about popular sovereignty. One free-state leader, James H. Lane, called it “a miserable delusion.” Lane, a Democrat who had voted for the Kansas–Nebraska Act as an Indiana congressman and then migrated to Kansas in April 1855, reflected the free-soil disillusionment that popular sovereignty had failed to enact the people’s will.<sup>32</sup> Nonetheless, popular sovereignty was administration policy. Acknowledging that reality, a free-soil memorial to Congress after the March election begged “enforcement,” rather than abandonment, of the “Kansas bill.” Charles Robinson, governor of the extra-legal Topeka movement’s “state” of Kansas, invoked all the prophets of popular sovereignty from Cass to Douglas in appealing to President Pierce. Just

May 11, 1855. Some Southerners also objected to Missourians’ attempts to “control the elections” in Kansas. See C. F. Brennan to J. S. Rollins, May 10, 1855, folder 28, roll 2, James F. Rollins Papers, Western Historical Manuscript Collection. See also other letters to Rollins during May 1855, *ibid.*

29. *Missouri Democrat* (St. Louis), October 26, 1855; Sara T.L. Robinson, *Kansas; Its Interior and Exterior Life*, 7th ed. (Boston: Crosby, Nichols, 1857), 65.

30. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 608–12.

31. Henry P. Waters to Charles Sumner, November 5, 1855, Edward Lillis Pierce Collection, Library and Archives Division, Kansas State Historical Society. For the Topeka Constitution, see *Herald of Freedom*, November 24, 1855.

32. *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 612–16; Wendell Holmes Stephenson, *The Political Career of General James H. Lane*, vol. 3, *Publications of the Kansas State Historical Society* (Topeka: Kansas State Printing Plant, 1930), 38.



as often, however, freestaters used the rhetoric of the American Revolution with its promise that the power to create and dissolve governments inheres in the people.<sup>33</sup>

Proslavery adherents reacted to the Topeka movement by condemning it as “treasonable” and proclaiming themselves the Law and Order Party. Law and Order proponents argued that, having failed to win the election, the Topeka movement sought to subvert popular sovereignty and rule. If the Topeka movement succeeded, proslavery partisans would be reduced to the status of slaves themselves.<sup>34</sup>

President Pierce admitted to “irregularities” in electing the territorial legislature, but he considered it “legitimate” while deeming the Topeka movement “revolutionary” and potentially “treasonable.” Douglas joined the president in blaming the freestaters’ “revolutionary movements” for Kansas’s turmoil. But Pierce and Douglas’s efforts to blame free-soil voters could not obscure the fact that Kansas’s problems, which in 1856 exploded into outright fighting, only called popular sovereignty into question.<sup>35</sup>

Democrats resisted identifying popular sovereignty as a failure. The party platform in 1856 reaffirmed that the principles of the Kansas–Nebraska Act were “the only sound and safe solution of the slavery question.” Presidential nominee James Buchanan endorsed Kansas–Nebraska as “founded upon principles as ancient as free government itself.”<sup>36</sup> As a practical matter, however, Buchanan had emerged as the leading contender for the nomination precisely because, absent in Europe as a diplomat in 1854, he was not personally “identified” with that controversial legislation.<sup>37</sup> The Democratic Party sought to both endorse and evade popular sovereignty.

33. *Organization of the Free State Government in Kansas, with the Inaugural Speech and Message of Governor Robinson* (Washington: Buell and Blanchard, 1856), 4–13; *Kansas Affairs, Special Committee Appointed to Investigate the Troubles in the Territory of Kansas*, 617–32, 657.

34. *Missouri Democrat*, November 21, 26, 1855.

35. *New York Times*, January 26, 1856; *Affairs of Kansas, The Committee on Territories*, 34th Cong., 1st sess., 1856, S. Rept. 34, serial 836, 38–39; J. Gillespie to [Lyman Trumbull], January 3, 1856, folder 5–5, Lyman Trumbull Family Papers, Illinois State Historical Library. On the summer of Bleeding Kansas, see Nichols, *Bleeding Kansas*; Rawley, *Race and Politics*, 158–72; Potter, *Impending Crisis*, 199–224.

36. *The Border Ruffian Code in Kansas* (New York: Tribune Office, [1856]), 10–11, 13–14; Morrison, *Slavery and the American West*, 163–87.

37. Howell Cobb to James Buchanan, December 5, 1854, in Ulrich Bonnell Phillips, ed., *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (New York: Da Capo Press, 1970), 348; D. T. Jenks to James Buchanan, May 14, 1855, roll 23, James Buchanan Papers, Historical Society of Pennsylvania, Philadelphia.

The Republican Party had emerged in 1854 as an alliance of anti-Kansas–Nebraska forces. As such, the party rejected popular sovereignty altogether in favor of congressional prohibition of slavery in the territories. Republican strength grew with popular sovereignty’s mishaps. “Douglas has been perfectly whipped out of his self government, non-intervention & popular sovereignty dogmas,” Illinois Republican Lyman Trumbull gloated to Abraham Lincoln in the summer of 1856.<sup>38</sup> For Republicans, the failure of popular sovereignty merely confirmed the inherent antagonism between slave society and self-government. In his journal, Edward Bates charged, “The Demagogues of Democracy have well nigh destroyed the power of the U States over the Territories, by granting powers in the people of the Territories, which cannot be exercised, & exciting hopes which cannot be gratified.”<sup>39</sup> The 1860 Republican platform called popular sovereignty “a deception and fraud.” Republicans denied that territorial legislatures could legalize slavery.<sup>40</sup>

But determining *when* slavery could be prohibited from a territory, as the Republicans demanded, was precisely another of popular sovereignty’s ambiguities. The Kansas–Nebraska Act did not specify at what point before statehood a territory could decide whether or not to have slavery. Could a territorial legislature decide, or did the decision have to be made when settlers wrote a state constitution? Some Southerners argued that slavery could not be excluded until the point of statehood and the writing of a state constitution. Northerners believed that the heart of popular sovereignty was the ability of the territory, while yet a territory, to exclude slavery.<sup>41</sup>

38. Lyman Trumbull to A. Lincoln, July 5, 1856, folder 7, Trumbull Family Papers.

39. Edward Bates Journal, vol. 1, December 22, 1859, Bates Family Papers, Missouri Historical Society; Morrison, *Slavery and the American West*, 163–87.

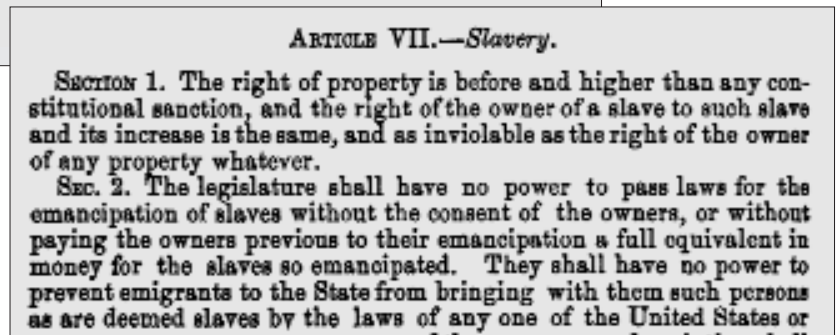
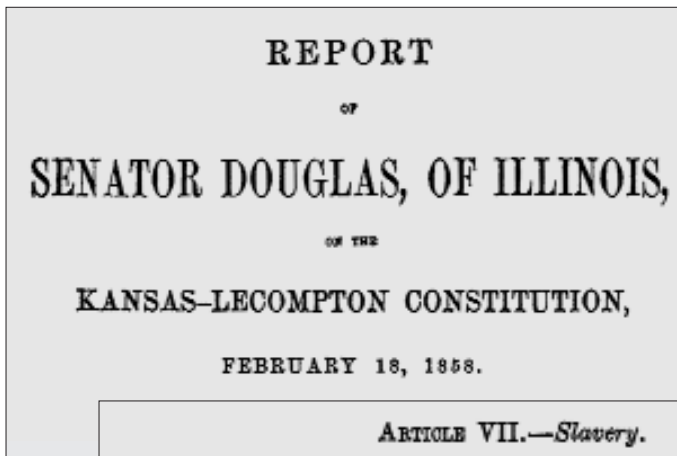
40. Brian Holden Reid, *The Origins of the American Civil War* (London: Longman, 1996), 218.

41. Quaipe, *The Doctrine of Non-Intervention with Slavery in the Territories*, 130–31; Eyal, “With His Eyes Open,” 205; Rawley, *Race and Politics*, 143; William J. Cooper Jr., *The South and the Politics of Slavery, 1828–1856* (Baton Rouge: Louisiana State University Press, 1978), 347–48; Major L. Wilson, *Space, Time, and Freedom: The Quest for Nationality and the Irrepressible Conflict, 1815–1861* (Westport, Conn.: Greenwood Press, 1974), 182–84; Michael F. Holt, “Another Look at the Election of 1856,” in *James Buchanan and the Political Crisis of the 1850s*, ed. Michael J. Birkner (Selinsgrove, Pa.: Susquehanna University Press, 1996), 37–67, esp. 55–56.

The territorial government proceeded with no clear guidance on this issue. In his first message to the territorial legislature, Governor Reeder charged its members to “temporarily prohibit, tolerate or regulate Slavery in the Territory.”<sup>42</sup> One observer felt that Reeder tilted toward the Southern position in this statement. The legislature proceeded to pass a draconian slave code. Missourian Benjamin Stringfellow announced, “They now have laws more efficient to protect slave property than any State in the Union.”<sup>43</sup> John Geary, one of Reeder’s many successors as governor, believed the territorial legislature had violated popular sovereignty by foreclosing the possibility of excluding slavery. The ambiguity of when in a territory’s development slavery might be excluded increasingly split the Democratic Party. The Northern, Douglas, wing argued that slavery could be excluded while a territory, but the Southern wing did not believe a territory could exclude slavery until statehood. President James Buchanan, in his inaugural address, tried to dodge the issue entirely, saying that “when” the people of the territory could decide about slavery was “of little practical importance” and deferred to the Supreme Court.<sup>44</sup>

Buchanan referred, of course, to the 1857 Dred Scott decision in which the Supreme Court ruled that slavery could not be prohibited from the territories. This ruling was a blow to both the Republican Party’s belief in congressional prohibition and Douglas’s popular sovereignty formula. Douglas struggled to salvage popular sovereignty with the Freeport Doctrine. In an 1858 senatorial election debate against Abraham Lincoln in

Freeport, Illinois, Douglas asserted that residents of a territory could still prohibit slavery by failing to pass local legislation to support the institution. In an 1859 article for *Harper’s New Monthly Magazine* he further elaborated on how local will over slavery could supersede Dred Scott.<sup>45</sup> By then, however, the Lecompton controversy had made



*The problems that popular sovereignty created were clearly revealed in the Lecompton crisis of 1857–1858. As Stephen Douglas stated in his 1858 report, the Lecompton Constitution did not reflect the will of the people of Kansas. Article VII of the constitution protects the institution of slavery, an institution that the majority of Kansas residents opposed.*

popular sovereignty seem even more problematic than had the 1855 territorial election.

While much attention has been paid to the fighting of Bleeding Kansas, the Lecompton crisis of 1857–1858 really was more important in revealing the problems that popular sovereignty created. In the summer of 1857 a proslavery constitutional convention wrote the Lecompton Constitu-

42. *New York Times*, July 21, 1855.

43. *Squatter Sovereign* (Atchison), December 4, 1855; *New York Times*, July 21, 1855; *The Border Ruffian Code in Kansas*, 1–2.

44. John W. Geary to Franklin Pierce, December 8, 1856, “Letters and Executive Minutes,” John W. Geary Collection, Library and Archives Division, Kansas State Historical Society; Allan Nevins, *The Emergence of Lincoln: vol. I: Douglas, Buchanan, and Party Chaos, 1857–1859* (New York: Charles Scribner’s Sons, 1950), 82–83; James D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1780–1908* (Washington, D.C.: U.S. Government Printing Office, 1908), 5:431–33.

45. Nevins, *The Emergence of Lincoln*, 1:95; Johannsen, *The Lincoln–Douglas Debates of 1858*, 86–107; Johannsen, *Stephen A. Douglas*, 697–98; Stephen A. Douglas, “The Dividing Line between Federal and Local Authority, Popular Sovereignty in the Territories,” *Harper’s New Monthly Magazine* 19 (September 1859): 519–37.

tion, named for the territorial capital where the delegates met. Although, as the Buchanan administration would later argue, the constitution technically was the product of a legal process, once again the product did not reflect the sentiments of free-soil settlers, who now constituted the majority of Kansans. Fearing fraud, freesoilers had boy-



An 1860 cartoon caricaturing Stephen Douglas as a "squatter sovereign" prepared to defend the will of the people in Kansas.

cotted the election that produced the Lecompton delegates. Nonetheless Buchanan's appointee as governor, Robert J. Walker, promised—and insisted that he had the president's sanction for the promise—that the convention's work would be submitted to the voters. However, the proslavery delegates, who only grudgingly yielded to the pressure for popular ratification, crafted a submission formula that seemed to deny a real choice. Voters could chose Lecompton with slavery, in which Kansas would become a slave state, or Lecompton without slavery, in which

future slave importations were prohibited but slaves already in the territory remained legal property. Voters could not reject Lecompton altogether. Arguing that the submission formula gave them no chance to totally eliminate slavery from the territory, freestaters boycotted the ratification election. Lecompton with slavery passed overwhelmingly, with more than six thousand votes compared to fewer than six hundred for Lecompton without slavery. Freestaters held their own ratification election, offering a straight yes or no vote over any version of Lecompton, which the proslavery side boycotted, and defeated Lecompton by more than ten thousand votes. But the Buchanan administration paid no attention to that referendum. Under pressure from Southern Democrats, Buchanan endorsed Lecompton. The president argued that the Lecompton convention proceedings were "fair and regular on their face" and that it would have been a "dereliction of duty" not to submit the constitution to Congress.<sup>46</sup>

Like the president, Southerners rationalized that Lecompton was a perfectly legal document. After all, the people's will could only be ascertained through legal methods. "[T]he wild cry of the infuriated mob is not the people's will," pointed out Congressman James S. Green. In addition, although the whole constitution was not submitted, the important element, the slavery provision, had been. In fact, whether to submit the constitution at all was the proper decision of the convention.<sup>47</sup>

46. James Buchanan to Robert J. Walker, July 12, 1857, *Lecompton Constitution, Etc.*, 36th Cong., 1st sess., 1860, H. Rept. 648, serial 1071, 112–13; M. J. Crawford to [Alexander Stephens], June 19, 1857, Alexander H. Stephens Papers, Library of Congress, Washington, D.C.; Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 266–68; Roy Franklin Nichols, *The Disruption of American Democracy* (New York: Macmillan Co., 1948), 117–31; D. W. Wilder, *The Annals of Kansas* (Topeka: G.W. Martin, 1875), 134–47, 155; Stampp, *America in 1857*, 272–75, 32, 282–85; *New York Times*, January 26, 1858; Richardson, *A Compilation of the Messages and Papers of the Presidents*, 5: 471–81, 646–47; Rawley, *Race and Politics*, 225–26.

47. *Congressional Globe*, 35th Cong., 1st sess., 1858: 901–8, 521–27; *Richmond (Virginia) Enquirer*, January 8, 1858; Stampp, *America in 1857*, 266–68; Robert M. T. Hunter to Shelton F. Leake, October 16, 1857, in Charles Henry Ambler, *Correspondence of Robert M.T. Hunter, 1826–1876* (New York: Da Capo Press, 1971), 237–41. Virginian Henry Wise was an exception to Southern endorsement of Lecompton. Wise thought the South had lost popular sovereignty's race to populate Kansas. Although "thrown into despair" by that failure, he felt the South should be "demanding nothing but what is right, and submitting to nothing that is wrong. I could not, therefore, sanction the Lecompton farce & fraud which attempted to coerce a people in adopting their organic law." Henry A. Wise to David Hubbard, March 3, 1859, Henry Alexander Wise Papers, Special Collections Library, Duke University, Durham, N.C.



But Lecompton was rejected by Northern Democrats, led by Douglas, and Republicans. Douglas found himself in the odd position of agreeing with Republicans that Lecompton violated the people's will. Senator Charles E. Stuart called the Lecompton Constitution "a trick and a fraud upon the people of Kansas."<sup>48</sup> Douglas agreed with those sentiments, but Republicans saw Lecompton as a not entirely unexpected result of popular sovereignty. An Ohio Republican derided Buchanan as a "natural fool" who "Squated down on Squatters Sovereignty." Lyman Trumbull, an Illinois senator, complained that originally the North had been told Kansas-Nebraska embodied true democracy but now was being told settlers could not exclude slavery. Republicans charged a conspiracy to make Kansas a slave state.<sup>49</sup>

Douglas, in contrast, saw Lecompton as a perversion of popular sovereignty. He insisted that Lecompton was not the will of the people and that Congress must reject it. After Buchanan submitted Lecompton to Congress, Douglas rose to protect the principle of popular sovereignty, saying "he thought *it was a clear violation of the organic act to force an obnoxious Constitution*" on Kansas.<sup>50</sup> Douglas looked on the Lecompton controversy as a "great struggle for principle": "the great fundamental right of every people to make their own constitution of government under our political system."<sup>51</sup> As a practical matter, Northern Democrats such as Douglas feared the political consequences at reelection time if they supported the "pretended submission" of slavery offered by Lecompton. Some Northern Democrats sought a way to placate constituents while holding the Democratic Party's Northern and Southern wings together.<sup>52</sup>

48. *Congressional Globe*, 35th Cong., 1st sess., 1858: 158–65, 1087–1101; Stamp, *America in 1857*, 277–81, 301–10.

49. J. N. Snyder to John Sherman, December 20, 1857, vol. 2, John Sherman Papers, Library of Congress, Washington, D.C.; *Congressional Globe*, 35th Cong., 1st sess., 1858: 1153–65; Stamp, *America in 1857*, 266–68.

50. *New York Times*, December 1, 10, 1857; Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 465–66; S. A. Douglas to J. A. McClernand, November 23, 1857, box 1, John A. McClernand Papers, Illinois State Historical Library; *Appendix to Congressional Globe*, 35th Cong., 1st sess., 1858: 174–204.

51. S.A. Douglas to J.A. McClernand, February 21, 1858, box 1, McClernand Papers.

52. *Congressional Globe*, 35th Cong., 1st sess., 1858: 1009–20.

Congressional Democrats found a "face-saving" way out of the Lecompton crisis through the English compromise. This agreement, which bore the name of anti-Lecompton Indiana Congressman William English, resubmitted the Lecompton Constitution to the voters of Kansas. English compromise supporters claimed that the land grant in the Lecompton Constitution necessitated this submission. It was widely acknowledged, however, that the land grant merely was a pretext for offering Kansans the chance to vote on all of the Lecompton Constitution. This pretext, it was hoped, would satisfy most Northern Democrats without offending Southern ones. Some, including Douglas, still objected that the English bill attempted to coerce a result: Kansans were offered a substantial land grant if they accepted Lecompton or indefinite postponement of statehood if they refused it. Opponents of the English bill called it both a bribe and a threat. Senator Henry Wilson summed it up as "a conglomeration of bribes, of penalties, and of meditated fraud." Despite the combination, Kansans solidly defeated Lecompton at the August 1858 referendum called by the English bill.<sup>53</sup>

The Lecompton crisis, like the territorial elections that had thrown Kansas Territory into turmoil, revolved around popular sovereignty's technicalities. Specifics of residency, timing, and fraud, important though they were, differed from another set of problems popular sovereignty posed. For the people of both sections, North and South, popular sovereignty's apparently easy prescription of democracy to cure the nation's ills actually raised as many questions as it answered. In the North, a powerful abolition movement challenged whether a Christian society could tolerate slavery.<sup>54</sup> Northerners were unsure whether democracies could decide moral issues.

Douglas's answer was a resounding yes, because religion had no business intruding into politics. At the time of debate over the Kansas-Nebraska Act, its political oppo-

53. Rawley, *Race and Politics*, 246–50; Frank Haywood Hodder, "Some Aspects of the English Bill for the Admission of Kansas," *American Historical Association, Annual Report 1906* (Washington, D.C.: Government Printing Office, 1908), 1: 199–210, esp. 201–10; William J. Cooper Jr., *Liberty and Slavery: Southern Politics to 1860* (New York: Knopf, 1983), 259–62; Stamp, *America in 1857*, 327–28. The vote was 11,300 to 1,788. *Congressional Globe*, 35th Cong., 1st sess., 1858: 80; Hodder, "Some Aspects of the English Bill," 201–10; *New York Times*, April 24, 1858.

54. James Brewer Stewart, *Holy Warriors: The Abolitionists and American Slavery* (New York: Hill and Wang, 1997); Louis Filler, *The Crusade Against Slavery, 1830–1860* (New York: Harper and Row, 1960).

nents specifically cited its spreading of a moral evil as a reason to oppose it. Democrats opposed to Kansas–Nebraska called on Christian ministers to make themselves heard in this controversy. That profession responded with a petition condemning Kansas–Nebraska as a “moral wrong . . . exposing us to the righteous judgments of the Almighty.” Douglas vigorously denied the right of the ministers to intervene as men of God rather than as citizens by claiming a special insight as to His will.<sup>55</sup> Douglas, in fact, never viewed slavery as a moral issue. Democrats also traditionally had been wary, in issues such as temperance, of enforcing morality by legal coercion. One man’s immorality might be another’s culturally acceptable freedom. Douglas asserted that morality was a private matter for the slave owner’s conscience. More than that, majority rule and self-government were the highest moral principles for Douglas and the Democrats.<sup>56</sup>

Many Northerners, however, believed it less simple to separate morality and politics. The abolition movement was rooted in the evangelical fervor of the Second Great Awakening. Some abolitionists viewed slavery as the greatest sin troubling the United States. To achieve the moral perfection many Christians sought, slavery must be eliminated.<sup>57</sup> Whigs, and later Republicans, had been more sympathetic to legally restricting moral evils such as drink and Sabbath-breaking. In this

tradition, Whig lawyer Abraham Lincoln reacted to the passage of the Kansas–Nebraska Act by deploring its replacement of the founders’ moral prohibition of slavery with “the right to choose wrong.”<sup>58</sup>

But many Northerners as well believed that the U.S. Constitution protected slavery. So did Lincoln, who condemned slavery with one breath and then promised to respect Southern rights with the next. Lincoln resolved that dilemma between the Constitution and slavery by emphasizing the Declaration of Independence, with its promise of equality, as the essential founding document. Slavery inherently was immoral because it violated that tenet of equality. And Kansas–Nebraska, because it legitimated inequality by accepting the right of some people to vote to enslave others, also violated equality and hence self-government. Lincoln and the Republicans, however, limited action to prohibiting slavery extension. Where slavery already existed, Lincoln and his party privileged the Constitution and the need to preserve the Union over their moral objections to slavery.<sup>59</sup>

Other Northerners, such as Kansas guerrilla John Brown, struck against the sin of slavery without attempting to reconcile this contradiction. Some abolitionists, most famously William Lloyd Garrison, who publicly burned the document, rejected the Constitution precisely because they believed it accepted slavery. Black abolitionist Frederick Douglass argued that it had been perverted by the Southern dominance of antebellum politics.<sup>60</sup>

55. “Appeal of the Independent Democrats,” *Congressional Globe*, 33d Cong., 1st sess., 1854: 281–82; *New York Times*, March 15, April 13, 24, 1854; James L. Huston, “Democracy by Scripture versus Democracy by Process: A Reflection on Stephen A. Douglas and Popular Sovereignty,” *Civil War History* 43 (September 1997): 189–200.

56. Jean H. Baker, *Affairs of Party: The Political Culture of Northern Democrats in the Mid-Nineteenth Century* (Ithaca: Cornell University Press, 1983), 177–96; David Zarefsky, *Lincoln, Douglas, and Slavery: In the Crucible of Public Debate* (Chicago: University of Chicago Press, 1990), 167–68, 95; Joel H. Silbey, “The Surge of Republican Power: Partisan Antipathy, American Social Conflict, and the Coming of the Civil War,” in *Essays on American Antebellum Politics, 1840–1860*, ed. Stephen E. Maizlish and John J. Kushma (College Station: Texas A&M University Press, 1982), 199–229; Harry V. Jaffa, *Equality and Liberty: Theory and Practice in American Politics* (New York: Oxford University Press, 1965), 95; Johannsen, “Douglas, Popular Sovereignty and the Territories,” 379, 388.

57. Edward Magdol, *The Antislavery Rank and File: A Social Profile of the Abolitionists’ Constituency* (Westport, Conn.: Greenwood Press, 1986), 137–39; Aileen S. Kraditor, *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834–1850* (New York: Pantheon Books, 1969), 102–3; Lewis Perry, *Radical Abolitionism: Anarchy and the Government of God in Antislavery Thought* (Ithaca: Cornell University Press, 1973), 55–128, 188.

58. Silbey, “The Surge of Republican Power,” 199–229; Wilson, *Space, Time, and Freedom*, 197–98; “Speech at Peoria,” in *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler (New Brunswick: Rutgers University Press, 1953), 2:247–83; Filler, *The Crusade against Slavery*, 260; John Patrick Diggins, *The Lost Soul of American Politics: Virtue, Self-Interest, and the Foundations of Liberalism* (New York: HarperCollins, 1984), 15–17; Zarefsky, *Lincoln, Douglas, and Slavery*, 175–77.

59. Diggins, *The Lost Soul of American Politics*, 301–3, 319; Jaffa, *Equality and Liberty*, 149; Johannsen, *The Lincoln–Douglas Debates of 1858*, 14–21; Zarefsky, *Lincoln, Douglas, and Slavery*, 183–84.

60. Stephen B. Oates, *To Purge This Land with Blood: A Biography of John Brown* (New York: Harper and Row, 1970); Perry, *Radical Abolitionism*, 188–94; Frederick Douglass, *The Constitution of the United States: Is it Pro-Slavery or Anti-Slavery?* (Halifax, Nova Scotia: T. & W. Birtwhistle, 1860). Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government’s Relations to Slavery* (New York: Oxford University Press, 2001), ix, leans toward Douglass’s argument that the Constitution was not intended to be proslavery. The federal government came increasingly to defend slavery, provoking a Northern backlash against the government’s role.

Southerners, of course, affirmed that slavery was both Christian and constitutional. In addition to finding biblical sanction for slavery, Southerners reconciled slavery and democracy by arguing that blacks' racial inferiority rendered them incapable of the free government celebrated by nineteenth-century Americans. Further, white Southerners argued that, as all societies required a laboring class, black enslavement rendered the political and social equality of whites possible. Southerners also could point to slavery as being constitutionally protected.<sup>61</sup> But as the Northern population grew faster than the Southern, they feared that a constitution emphasizing democratic majorities might infringe on the constitutional rights of minorities. Popular sovereignty raised that question directly.

Southerners had recognized this problem since South Carolina senator John C. Calhoun began formulating theories that would protect Southern slave rights from a growing Northern population and political majority. The "common-property" doctrine adopted by many Southerners argued that the territories belonged to all states equally and that the institutions, that is, slavery, of some states could not be prohibited from the territories at all.<sup>62</sup> One Southerner wrote that whatever method was used to prohibit slavery from the territories, whether it be congressional prohibition or the vote of Northern settlers, "In either case, the Constitution is violated."<sup>63</sup> Another Southerner feared that with growing Northern power in Congress, "This majority can mould the Constitution to their own purposes. What will Constitutional guarantees be worth under such circumstances?"<sup>64</sup> Historian William Cooper has argued that Southerners fought so hard for Lecompton because failure to bring Kansas in slave would nullify the accomplish-

ments of the Dred Scott decision: "the great battle over constitutional rights would have been fought in vain."<sup>65</sup> By 1860 many Southerners made their continuance in the Democratic Party conditional upon congressional protection of slavery in the territories, a condition Northern Democrats could not accept. Northern Democrats saw Southern



Abolitionist William Lloyd Garrison believed strongly that the U.S. Constitution protected slavery, and for this reason he publicly burned the document.

61. David F. Ericson, *The Debate Over Slavery: Antislavery and Proslavery Liberalism in Antebellum America* (New York: New York University Press, 2000), 19–35; Jan Lewis, "The Problem of Slavery in Southern Political Discourse," in *Devising Liberty: Preserving and Creating Freedom in the New American Republic*, ed. David Thomas Konig (Stanford: Stanford University Press, 1995), 265–97; Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701–1840* (Athens: University of Georgia Press, 1987), 24–40, 110–11, 116.

62. Michael Kammen, *Spheres of Liberty: Changing Perceptions of Liberty in American Culture* (Madison: University of Wisconsin Press, 1986), 93–96; Wolff, *The Kansas–Nebraska Bill*, 156–58; Robert R. Russel, "The Issues in the Congressional Struggle over the Kansas–Nebraska Bill, 1854," *Journal of Southern History* 29 (May 1963): 187–210.

63. *Richmond Enquirer*, October 10, 1854.

64. William B. Napton Diary [1857], folder 3, 208, Missouri Historical Society.

65. Cooper, *Liberty and Slavery*, 259–62.

66. William Watson Wick to Robert M.T. Hunter, May 6, 1860, in *Amblar, Correspondence of Robert M. T. Hunter*, 323–24; William Watson Wick to Robert M. T. Hunter, April 27, 1860, *ibid.*, 321–2; Fehrenbacher, *The Dred Scott Case*, 531–32.

acquiescence in Kansas–Nebraska as acquiescence to popular sovereignty's grant to "all future Territories perfect sovereignty and independence in reference to all municipal questions and matters."<sup>66</sup> In reality, Southerners took the best deal they could get in 1854, that being popular sovereignty. When it failed to protect their interests, their fealty to it eroded.

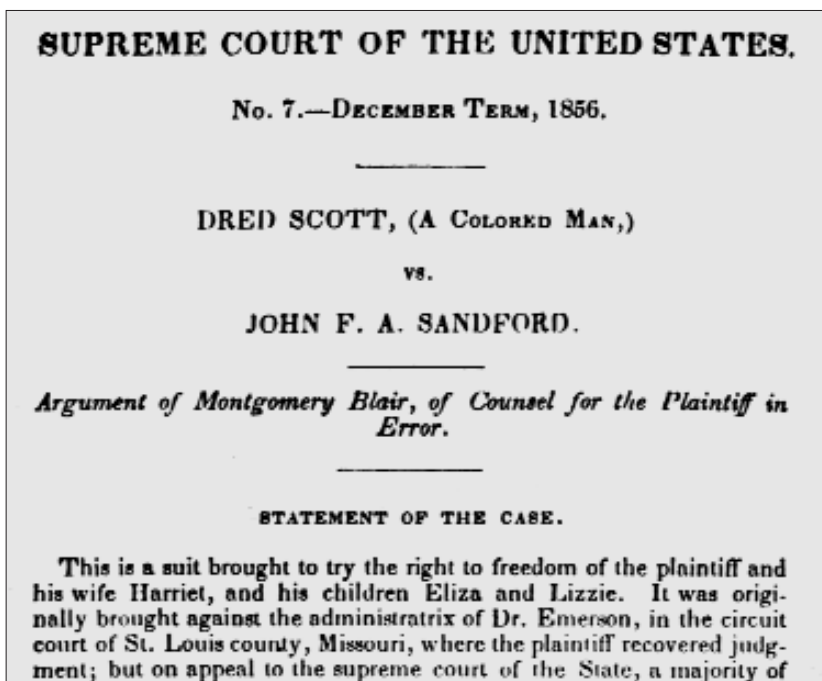


Nonetheless, most Southerners accepted popular sovereignty in 1854 because at least it removed the Missouri Compromise's prohibition on slavery in the northern half of the Louisiana Purchase. Popular sovereignty removed what many Southerners viewed as a "stigma" against slavery, although it did not insist that slavery be allowed into

just and odious discrimination against her domestic institutions from the statute book."<sup>69</sup>

In another variation, Southerners insisted that if the majority wanted slavery, the minority had no right to protest. When the clerk of a Missouri River steamboat jest-ed about abolition, he abruptly was ordered to "Shut up" because "we're in a section now, where you can't say that there word, not even in jest. . . . You'll have to respect the wishes of the sovereign people; it's them that's to rule;—d-ye hear, Mister?"<sup>70</sup> Such was the rationale of the Blue Lodges, organizations such as the Platte County Self-Defensive Association, whose purpose was just as much to police antislavery sentiment in Missouri as to spread human bondage into Kansas. The title "self-defensive" itself indicated its members' fears that undermining slavery would threaten their property, and even their lives, by encouraging slave insurrection. Weston, Missouri, minister Frederick Starr ran afoul of the self-defensives because he was believed to be too abolitionist and too friendly with blacks. He was ordered to leave the region. The persecution Starr described was part of a long tradition of using ostracism and even violence to stifle dissent against slavery.<sup>71</sup>

Looking back after many years, Lawrence Mayor John P. Usher chose to celebrate freedom of opinion as the fruit of popular sovereignty. "All say and do as they please, and say and do it in peace and without injuring anybody. That is the condition which we have reached under the Kansas-Nebraska Act."<sup>72</sup> Usher was wrong. This "condition" did not exist until after a bloody civil war had resolved the slavery issue, eliminating the right to support slavery.



Possibly Southerners fought so hard for the Lecompton Constitution because failure to bring Kansas in as a slave state would nullify the accomplishments of the Dred Scott decision, handed down by the U.S. Supreme Court in 1857.

the territory. "What is this Nebraska Bill itself, but an intervention by Congress to remove a restriction on the free ingress and occupancy of slavery in the territories?"<sup>67</sup> For one Southerner, the Kansas-Nebraska Act was "the great act which struck the brazen collar of inferiority from our necks."<sup>68</sup> Robert Hunter recalled that the Kansas-Nebraska Act's repeal of the Missouri Compromise was a "moral triumph" because, "although not all that we thought the South entitled to," that is, federal protection of slavery in the territories, Kansas-Nebraska at least "removed an un-

67. Quotation in *Richmond Enquirer*, May 2, 1854; Wolff, *The Kansas-Nebraska Bill*, 156-58; Russel, "Issues in the Congressional Struggle."

68. Thomas W. Thomas to Alexander Stephens, May 20, 1856, roll 2, Stephens Papers.

69. R. M. T. Hunter to Shelton F. Leake, October 16, 1857, in Ambler, *Correspondence of Robert M. T. Hunter*, 237-41.

70. Thomas H. Gladstone, *Kansas; or, Squatter Life and Border Warfare in the Far West* (London: G. Routledge and Co., 1858), 109.

71. Nichols, *Bleeding Kansas*, 24; Parrish, *David Rice Atchison of Missouri; Squatter Sovereign*, February 3, 1855. For correspondence of Frederick Starr, see folders 1, 2, Starr Papers. Grimsted, *American Mobbing, 1828-1861*, 85-113; Russel B. Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy, 1830-1860* (East Lansing: Michigan State College Press, 1949), 139-76.

72. Gleed, *The Kansas Memorial*, 23.

Even the eventual admission of Kansas did not amount to an endorsement of popular sovereignty. In the spring of 1860 Kansas again applied for admission, this time under the free-state Wyandotte Constitution. The House of Representatives voted to admit (134 to 73), but the Senate postponed the admission bill because of Southern opposition. Not until Southern senators withdrew from that chamber, their states having seceded from the Union, did the Kansas admission bill pass the Senate: "with all the curious accompaniment of anticlimax, the Kansas issue, so long the Congressional firebrand, was settled tamely enough."<sup>73</sup> That settlement, however, brought no meeting of the minds on the meaning of popular sovereignty or the issues it raised. Rather, one side of the debate simply withdrew to do battle of another kind.


The Civil War, not popular sovereignty, resolved both the moral issue of slavery and its constitutional status. War legitimated antislavery by incorporating it as a war aim in the Emancipation Proclamation and by enshrining it in the Gettysburg Address. And war destroyed constitutional property rights to slaves with the Confiscation Acts, Emancipation Proclamation, and Thirteenth Amendment.<sup>74</sup>

But the Civil War resolved only the tensions created by slavery. It did not provide guidance as to how a democracy resolves other issues where morality, constitutional rights, and politics conflict. No other issue has produced the cataclysmic trauma slavery did, but that does not mean democracy has become transparent or the fissures revealed by popular sovereignty have disappeared entirely. The 2000 election exposed a system still plagued by imperfect voting procedures and alleged fraud. In the abortion issue,

73. Nichols, *Disruption of American Democracy*, 475; *Admission of Kansas*, 36th Cong., 1st sess., 1860, S. Misc. Doc. 23, serial 1038, 1–2; *New York Times*, April 14, 1860; *Western Journal of Commerce* (Kansas City, Mo.), June 7, 1860.

74. Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Oxford University Press, 1988), 7; Garry Wills, *Lincoln at Gettysburg: The Words that Remade America* (New York: Simon and Schuster, 1992), 137–47; James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 500–2, 838–40.

political commentators and historians discern the same blend of morality, constitutional rights, and politics that made the slavery issue so volatile.<sup>75</sup>

Yes, popular sovereignty failed. But its failure cannot be dismissed as either the mere poor performance of a "blundering generation" of politicians or an aberration in United States political history.<sup>76</sup> Rather that failure cuts to the heart of democracy's ability to function when morality and constitutional rights confront each other within the political system. Without doubt, the Kansas–Nebraska Act could have been better drafted, preventing some of the conflict in Kansas, but the failure of popular sovereignty was the failure of self-government itself. That failure has sobering lessons for today. 

75. See, for example, the essays in the round table of the *Journal of American History* 88 (September 2001), especially Mark Wahlgren Summers, "Party Games: The Art of Stealing Elections in the Late-Nineteenth-Century United States," 424–35; Daniel T. Rodgers, "Stories, Games, and Deliberative Democracy," 444–52. Laurence Tribe calls abortion "the clash of absolutes, of life against liberty" that pits religious values about life against women's constitutional rights. See Laurence H. Tribe, *Abortion: The Clash of Absolutes* (New York: Norton, 1990), 3, 27. Gilbert Y. Steiner, "Introduction: Abortion Policy and the Potential for Mischief," in *The Abortion Dispute and the American System*, ed. Gilbert Y. Steiner (Washington, D.C.: Brookings Institution, 1983), 1–12, points out that, despite the Supreme Court's decision, pro-life advocates see abortion as fundamentally immoral. Pro-choice forces "dismiss the immorality indictment." Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley: University of California Press, 1984), 2–3, 92–157, makes many similar points about the inability of pro-life and pro-choice forces to agree on the "moral status" of the fetus and how both sides have adopted the rhetoric of rights as in "right-to-life" and "right to choose." Lawrence Thomas, "Abortion, Slavery, and the Law: A Study in Moral Character," in *Abortion: Moral and Legal Perspectives*, ed. Jay L. Garfield and Patricia Hennessy (Amherst: University of Massachusetts Press, 1984), 226–37, argues that the equation of slavery and abortion is false because slave owners had to know that slaves were "full-fledged persons" whereas it is not clear that fetuses are. This fails to account for racism's denial of full personhood to African Americans. In discussing whether or not the fetus is a person, Charles H. Baron, "The Concept of Person in the Law," in *Defining Human Life: Medical, Legal, and Ethical Implications*, ed. Margery W. Shaw and A. Edward Doudera (Ann Arbor, Mich.: AUPHA Press, 1983), 121–48, esp. 124–37, uses the Dred Scott decision as an example of how African Americans were sometimes people and sometimes property under U.S. law. See also Charles E. White, "Why Abortion Matters Most," in *Abortion*, ed. Janet Podell (New York: H.W. Wilson Co., 1990), 73–81; Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (Berkeley: University of California Press, 1997).

76. For a discussion of the historiography of Civil War causation, see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1995), 1–10.